IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**SUIT NO. 856 OF 1979**

Photos Photiades and Company Ltd. )
a company incorporated under the )
laws obtaining in Cyprus and having )
their registered office at Corner )
Santa Roza and Avlon Streets, )
Nicosia, Cyprus. )..Plaintiffs

Versus

1. Messrs. Polyweave a partnership )
firm duly registered under the )
Partnership Act and having their )
registered office at 32, Kala )
Bhavan, 3, Mathew Road, )
Bombay 400 004. )

2. Niranjan Gandhi )
3. Visanji Chheda )
4. Chandrakant Dalal )
5. Mahesh Jobenputra )
all of Bombay Indian Inhabitants )
carrying on business at 32,Kala )
Bhavan, 3, Mathew Road, )

Bombay 400 004. )..Defendants

Mr. Pravin Diwan with Mr. A.S.Doctor i/b. Kanga & Co. for the Plaintiffs.

Mr. M.S. Shah i/b. Shantilal & Co. for Defendants Nos. 1 & 2.

CORAM: S.K.SHAH,J.

DATE: 1st November, 2004.

**ORAL JUDGMENT :**

1. The learned Counsel for the Defendants Nos. 1 and 2 submits that he has instructions from the Defendants Nos. 1 and 2 not to contest the suit. The Defendant No.3 has expired. The learned Counsel for the Plaintiffs submits that the name of the Defendant No.3 be deleted as he does not want to have any decree against the Defendant No.3 or his legal representatives. The name of Defendant No.3 is deleted.

2. All the Defendants have filed the Written Statement. Nobody appears for Defendants Nos. 4 and 5.

3. The Plaintiffs' witness is present. His examination-in-chief is already recorded on 29th June,

1998. The learned Counsel for the Defendants Nos. 1 and 2 states that he does not want to cross-examine the Plaintiffs' witness.

Heard Counsel.

4. This is a suit for recovery of money. The Plaintiff is a Company incorporated under the Law obtaining in Cyprus, carrying on business of General, Local and International Trade.

5. The Plaintiffs alleged that Mr. Gandhi of the Defendants approached the Plaintiffs for generating business of products of the Defendants in Cyprus. For that purpose,Mr. Gandhi met the Plaintiffs' witness at Cyprus and asked the Plaintiffs to help him for procuring business in various countries such as Romania, Albania, Yugoslavia, Poland, Russia and other countries. Pursuant to the talks between the Plainiffs' witness and Mr. Gandhi of the Defendants, a contract dated 7.11.1975 was executed and concluded. As per the contract, for procuring business, as agreed, the Defendants offered 10% c.i.f. by way of commission.

6. Pursuant to the contract, the goods were supplied. There was correspondence between the

parties as per Exhibit "A". Four Bank Drafts were, accordingly, issued by the Defendants to the Plaintifs towards their commission. However, all the four Bank Drafts were dishonoured when presented to the Bank as the Defendants had stopped payment of those Drafts. There was further correspondence between the Plaintiffs and the Defendants. The Defendants however, failed to make paymnent of the amount of commission and, therefore, the Plaintiffs filed the suit for recovery of 3,56,493.78 U.S. Dollars equivalent to Rs.28,87,599.62 with interest at 18% per annum on the sum of U.S.$ 2,98,265.16 from the date of the suit till payment or realisation. The Suit was also filed for claiming damages to the extent of U.S. $ 13,20,000.

7. The Defendants resisted the suit and raised several contentions.

8. In view of the pleadings, the following issues were framed against which my findings are recorded:-

| ISSUES | Finding |
|---|---|
| 1. Whether Reserve Bank of India or their officders are necessary party to this suit ? | Negative |
| 2. If so,whether suit is bad for their non-joinder ? | Negative |
| 3. Do Dfendants prove that commission at 4% of the contract price was only agreed to be | Negative |

| | | |
|---|---|---|
| | paid and 6% towards service charges ? | |
| 4. | Do Defendants prove that the Plaintifs have not rendered any service to them. | Nagative |
| 5. | Do they prove quantum of U.S.$ 88,826.49 and interest thereon at 16% ? | Nagative |
| 6. | Do Plaintifs prove their claim of U.S. Dollars 3,56,493.78 towards commission under contract ? | Affirmative |
| 7. | Do defendants prove that they terminated the contract with the plaintiffs as stated in para 14 of the written statement? | Negative |
| 8. | Do plaintifs prove damage of US Dollars 13,20,000 for contract directly entered into by the defendants with third party ? | Not pressed |
| 9. | Are defendants entitled to set off the said sum from the claim of the plaintiffs ? | Negative |
| 10. | What decree or order in suit as well as inthe counter-claim ? | As per final Order below. |

**REASONS**

9. The Plaintiffs examined Photos Photiades Iacovos in support of their claim. His evidence has gone unchallenged. There is no cross-examination to his examination-in-chief. The evidence of the Plaintiffs' witness supported by the correspondence, Exhibit "A", four dishonoured Bank drafts produced at Exhibit "B" (colly) and further correspondence between the Plaintifs and the Defendants produced at Exhibit "C"

(colly) and Ex."D" (colly) establish the claim of the Plantiffs.

10. As regards issue Nos. 1 to 5, 7 and 9, there is no evidence. Therefore, these issues are answered in the negative.

11. as regards issue No.6, this issue is established by the evidence of the Plaintiffs' witness and the aforesaid documents.

12. The Plaintiffs are, therefore, entitled to recover from the Defendants Nos. 1,2, 4 and 5 U.S. $ 3,56,493.78 towards commission under the contract.

13. As regards the damages claimed in prayer (b), the learned Counsel for the Plaintiffs submits that the Plaintiffs do not press that claim. Therefore, prayer (b) is disallowed.

14. The learned Counsel for the Plaintiffs submits that instead of 18% interest the Plaintiffs are claiming only interest at 12% per annum from the date of the suit till the date of decree.

15. The learned Counsel for the Plaintiffs also brought to my notice the decision of the Apex Court in

the case of Forasol vs. Oil and Natural Gas Commission, reported in AIR 1984 SC 241 for making a claim of conversion rate as exists on the date of the decree. In the aforesaid decision, the Apex Court laid down five competing dates in connection with the rate of foreign exchange in regard to the suit in which money is claimed in foreign currency with equivalent amount, in the alternative,in the currency of the country in which the suit is instituted. The Apex Court further observed that it would be fairer to both the parties for the court to take the date of passing the decree, that is, the date of the judgment, as the proper date for fixing the rate of exchange at which the foreign currency amount could be converted.

16. Hence the order :-

The Defendants Nos. 1, 2, 4 and 5 shall pay to the Plaintiffs U.S. $ 3,56,493.78 with interest at 12% per annum on U.S. $ 2,98,265.16 from the date of the suit till the date of decree or its equivalent in Indian currency at the rate prevailing on the date of the decree and thereafter at the rate of 18% per annum from the date of the decree till the date of realisation of the entire amount with costs.

17. The Defendants' claim for set-off and

counter-claim is hereby dismissed.

18. Decree be drawn accordingly.

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**(S.K. SHAH, J.)**